Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
A La Carte and Themed Tier Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems	))))	**MB Docket No. 04-207**

COMMENTS OF INTERNATIONAL CHANNEL NETWORKS

International Cable Channels Partnership Ltd. d/b/a International Channel Networks ("ICCP") submits these Comments in response to the Commission's Public Notice, DA 04-1454, released May 25, 2004, concerning a la carte and "themed-tier" services on cable television and direct broadcast satellite systems. Government mandated a la carte carriage will jeopardize the viability of niche networks like the International Channel which already face significant challenges in expanding distribution and increasing advertising revenues in the current marketplace. Because the International Channel also provides one of the primary means by which ICCP promotes its premium foreign language service offerings, mandatory a la carte carriage would be particularly detrimental to ICCP and all of its programming services.

ICCP's Programming Services

ICCP owns and operates the International Channel. The International Channel is the only twenty-four hour a day national cable network dedicated to foreign language international programming, providing multilingual informational, educational and entertainment video programming appealing to a variety of minority and ethnic groups. It offers programming in twenty languages, including multiple Asian, European and Middle Eastern languages, such as Arabic, Cambodian, Cantonese, French, German, Greek, Hindi, Hmong, Hungarian, Italian, Japanese, Korean, Mandarin, Polish, Portuguese, Romanian, Russian, Tagalog (Filipino), Thai, and Vietnamese. Launched in 1990, the International Channel presently is distributed by multichannel video programming distributors ("MVPDs"), particularly cable systems, throughout the United States to about 11 million subscribers.

In addition to the International Channel, ICCP markets the International Premium Networks, more than 18 full time digital programming networks in foreign languages, including the following channels:

Adisam - Three Romanian informational and entertainment networks
AIT - Pan African general entertainment programming
ART Cable - Arabic Cultural and Islamic general entertainment programs
CCTV-4 and Power TV Zhong Tian Channel - Chinese Programming
MBC and tvK24 - Korean Programming
RAI - The rich culture of Italy, 24 hours a day
Channel One Russia and RTN - Russian television programming
Rang-A-Rang and NITV - Iranian/Farsi television programming
SBTN - America's first 24-hour Vietnamese cable network
TFC - (ABS-CBN) Catering to all aspects of Filipino life
TV5 - Lively French-language television 24 hours a day
TV Asia - Airing programs in South Indian languages: Hindi, English, Gujarati, Urdu, Bengali, Punjabi
TV JAPAN - Japanese programming including LIVE Sumo tournaments
TV Polonia - Polish programming

ICCP has experience in marketing both a tiered programming network and a la carte premium channels and is uniquely positioned to comment on the very different economics applicable to these disparate methods of distribution. More importantly, ICCP maintains that the diversity of its programming services -- and the various methods by which they are marketed -- demonstrate that the current marketplace is working efficiently, allowing for tiered carriage of some kinds of programming and a la carte carriage where it makes economic sense.

A. Distribution of The International Channel

The International Channel is a unique programming service that reaches viewers underserved by most mainstream programming services. It offers foreign-language speaking Americans the opportunity to receive programming from their homelands in their native languages. It also allows English speaking Americans to get an international perspective on world events and cultural issues. In short, it offers a wealth of diverse programming reflecting the viewpoints of different races, ethnic backgrounds, religions and political systems all over the world. However, the International Channel also faces unique challenges in obtaining distribution and generating advertising sales.

International Channel has worked for years to obtain distribution from cable operators, direct broadcast satellite providers and other MVPDs. Among other things, capacity constraints and digital retiering have adversely affected cable distribution of the International Channel. Cable operators often are reluctant to devote analog capacity to the International Channel because its programming does not have the same broad appeal as other channels. In addition, International Channel has been displaced in some major markets with significant foreign language speaking populations because foreign language broadcast stations in those markets receive basic tier carriage as a result of must-carry obligations. As a result, International Channel has achieved only limited distribution, reaching approximately 11 million subscribers, usually on the expanded basic or digital service tier of its cable system affiliates.

International Channel has achieved that level of distribution by marketing itself to cable operators and other MVPs in areas with heavy concentrations of foreign and ethnic residents. For example, there are over 200,000 Vietnamese residents in the Houston, Texas area, and there is a substantial Arabic population in Dearborn, Michigan. In these and other similar areas, International Channel markets to local cable operators and seeks carriage on widely distributed tiers.

Tiered carriage of the International Channel provides an opportunity for foreign and ethnic viewers to see a certain amount of programming in their own language on that channel. To the extent that those viewers are interested in obtaining more programming in their language, ICCP also offers full-time premium foreign language programming services. In this respect, we provide the cable operator or other MVPD with an opportunity to offer a unique programming service to a significant segment of its local community, driving additional subscription to the distributor's service and generating premium service revenues.

B. Advertising Sales

International Channel already faces unique challenges in the sale of advertising time. Because of its limited distribution, International Channel is not rated by Nielsen. Without Nielsen ratings, which are heavily relied upon by most media buyers, International Channel has experienced difficulty in selling advertising time through traditional means.

In addition to its limited distribution, other factors make it difficult for International Channel to sell advertising even where it enjoys carriage on the expanded basic tier. Programming on the International Channel is in at least 20 different languages, creating a highly fragmented audience for advertisers. For example, programming directed toward Asian viewers of the International Channel is carried in seven different languages, further limiting the audience for prospective advertisers.[1] As a result, International Channel has achieved only limited success in selling advertising to Fortune 500 companies that target particular ethnic audiences in the

[1] In an effort to increase distribution and advertising sales, International Channel recently has begun to originate English-language programming directed toward the needs and interests of Asian viewers, enabling advertisers to reach a broader segment of the Asian viewers with English language advertising.

United States. International Channel derives substantially less than half of its revenues from advertising sales, which is unusual for a channel that is sold as part of a tier.

C. Adverse Effects of A La Carte Carriage On ICCP Program Services

International Channel is the type of niche programming service that would be most seriously affected by any government program fostering a shift to a la carte carriage. According to the General Accounting Office, cable operators have acknowledged that "smaller networks or those providing *specialty* programming would be hurt the most by an a la carte system" because they would be unable to gain sufficient subscribers and advertiser support to keep the network alive. See United States General Accounting Office, "Telecommunications: Issues Related to Competition and Subscriber Rates in the Cable Television Industry," GAO Report No. GAO-04-8 (rel. October 2003) ("GAO Report") at 36 (emphasis in original).

Other cable programmers have expressed the same concern over the future of niche programming services in an a la carte world. George Bodenheimer, President of ESPN, Inc. and ABC Sports, testified before the Senate Commerce Committee that a la carte carriage would result in "the extinction of many channels that serve specific but important audiences." In an editorial in the Washington Times on April 12, 2004, Alfred Liggins, Chairman of the "TV One" programming service,[2] warned that a la carte carriage could "put us and many other innovative cable networks out of business." Bear Stearns reached a similar conclusion, finding that "many of the smaller, nascent networks would find it difficult to survive in an a la carte environment, reducing consumer choice." See, Raymond Lee Katz, et al., Bear Stearns, "A La Smart?" (March 29, 2004) ("Bear Stearns Report") at 5. Even the providers of popular programming services such as Discovery Network (reported to have over 88 million subscribers) have expressed concern about their ability to survive on an a la carte basis. See, e.g. Letter from

[2] TV One is a programming service directed toward African-American adults.

Judith McHale, President and Chief Operating Officer of Discovery Communications, Inc. to Members of the Senate Committee on Commerce, Science and Transportation, dated March 8, 2004 ("Discovery's award-winning networks will not exist in an a la carte environment….").

A la carte carriage of the International Channel would have particularly devastating effects for ICCP because, in addition to generating subscriber fees and advertising revenues, International Channel plays a pivotal role in the marketing of ICCP's premium services. Tiered carriage of the International Channel affords cable subscribers an opportunity to sample the full-time foreign language programming available on ICCP's premium programming services by watching particular foreign language programs on the International Channel. Shifting International Channel away from carriage in broader programming packages and into mini-tier or a la carte carriage will not only adversely affect the International Channel, but it also will eliminate one of ICCP's most effective means of promoting the sale of its premium programming services.

D. Increased Costs For Consumers

Mandatory a la carte carriage will substantially change the economics of the International Channel by further reducing its limited distribution, license fees and advertising revenues. In order to compensate for those lost revenues, ICCP would have to market the International Channel like one of its premium pay services. ICCP markets its premium foreign language program networks to cable operators and other MVPs with distribution systems located in areas with substantial ethnic and foreign-speaking populations. As a result, each network has far more limited distribution than a typical advertiser supported network. In order to survive, ICCP charges substantial monthly license fees for these services. Subscribers typically pay between

$9.99 and $25.00 for a single foreign language premium network.[3]

There is no reason to believe that ICCP could offer the International Channel at a substantially lower price on an a la carte basis. Because there is little or no opportunity for ICCP to reduce its programming costs (which already are very low), there is little doubt that it would have to increase substantially the subscriber fees for the International Channel to compensate for the loss in subscriber and advertising revenue that would result from a shift to a la carte carriage. The primary reason that International Channel has been able to survive to date with its limited distribution is that it has controlled its programming and marketing costs and originates very little programming domestically. International Channel would be left with no alternative but to increase license fees substantially to offset the adverse financial effects of any transition to a la carte carriage. Such an increase likely would significantly reduce International Channel's distribution, possibly to the point of extinction, because it offers only a limited amount of programming in any one language and a subscriber would be less likely to pay more to receive programming in languages other than his own.[4]

GAO indicated that other programmers faced with the movement to a la carte carriage likely would experience similar reductions in subscriber and advertising revenues, leading to reductions in programming expenditures and increases in per-subscriber license fees, some or all of which would likely be passed on to the consumer by the cable operator. <u>See</u> <u>GAO Report</u> at 6 ("Although cable networks may take steps to reduce their production costs to compensate for the decline in advertising revenue [resulting from a la carte carriage], cable networks may also raise

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[3] ICCP also offers certain foreign language network packages (including for example, two video channels and two audio services) for which subscribers pay up to $27.95 per month.

[4] Moreover, many students and immigrants that benefit from tiered carriage of the International Channel cannot afford the premium services offered by ICCP. If the International Channel is required to shift to a la carte carriage, these viewers will be left with no programming service in their native language.

the license fees charged to cable operators for the right to carry the networks [and]…some of the increase is likely to be passed on to subscribers.”). For that reason, the GAO questioned whether subscribers would experience any significant reduction in overall rates as a result of a la carte carriage:

> “[a] variety of factors -- such as the pricing of a la carte service, consumers’ purchasing patterns, and whether certain, niche networks would cease to exist with a la carte service -- make it difficult to ascertain how many consumers would be better off and how many would be made worse off under an a la carte approach.”

Id. at 30. GAO further concluded that “subscribers’ monthly cable bills would not necessarily decline under an a la carte system” and, instead, “cable rates could actually increase for some consumers.” Id. at 34, 36.

Those conclusions were consistent with the findings by Bear Stearns, which reported that the programming cost to the consumer, including the cost of the basic tier buy-through requirement, for just five of the most popular services on an a la carte basis would range from $19.11 per month (assuming that the service would retain 75% of basic service subscribers when carried a la carte) to $38.61 per month (assuming that the service retained only 25% penetration). Those figures did not include additional equipment costs or taxes and franchise fees. Bear Stearns Report at 3-4. Based on Nielsen information, GAO reported that the households receiving more than 70 channels only watch, on average about 17 of those networks. GAO Report at 31. Given the Bear Stearns analysis, there is little reason to believe that a consumer will save money by acquiring those 17 networks on an a la carte basis rather than as components of a larger enhanced basic service tier.

E. Adverse Effects on Program Diversity

From its inception, one of the statutory mandates of the Commission has been to promote a diversity of viewpoints in the media marketplace. For that reason, it is particularly troubling to have the Commission consider a regulatory scheme that would reward the large media conglomerates who can afford to underwrite and cross-promote new services while threatening smaller, niche services with extinction. There is no question that the advertising dollars lost by smaller programmers as a result of their movement to mini-tier or a la carte carriage will flow to the large media conglomerates and broadcast-affiliated programmers. As Bear Stearns bluntly put it, under an a la carte regime, "the rich get richer." Bear Stearns Report at 6.

Conversion to a la carte carriage will confer significant competitive advantages on larger, integrated networks, ultimately resulting in loss of programming diversity for consumers:

> With less distribution, cable networks will have to differentiate and market more effectively. This will require money, giving those richer networks an advantage over newer, smaller, and start-up properties, in our view. Should this transpire, it could lead to a reduction in the number of networks.

Bear Stearns Report at 6. Thus, consumers ultimately may gain a greater ability to select their programming under an a la carte regime, but they will have fewer choices from which to make their programming selections.

Conclusion

Mandatory a la carte carriage will have serious adverse consequences for small niche programming networks like the International Channel, which already are working hard to expand distribution and increase advertising revenues. At the same time, there is little or no reason to believe that it will result in savings for consumers. The Commission should not pursue a regulatory path that is lined with such obvious pitfalls and is far from certain to lead to any substantial benefits for consumers.

Respectfully submitted,

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